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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter Of:	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act --	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Amendment of Part 90 of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144
	)	
Amendment of Parts 2 and 90 of the Commission's Rules To Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool	)	PR Docket No. 89-553

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COMMENTS OF MOTOROLA

Motorola supports the Commission's actions in the *Third Report and Order* in this proceeding. Motorola believes, however, that a few issues raised by petitioners are worthy of consideration, including: extending primary status to all 900 MHz SMR facilities applied for prior to August 10, 1994; elimination of the loading requirements for existing 900 MHz SMRs; clarification of the effective dates of Part 90 rule changes for grandfathered licensees; and limiting the breadth of SMR applications considered "new" for purposes of competitive bidding. In addition, Motorola opposes suggestions by SMR Won that the Commission should examine, in a rulemaking proceeding, competitive issues relating to a proposed transaction by Nextel and Motorola, as well as attribute all 800 MHz SMR spectrum for purposes of the Commercial Mobile Radio Service ("CMRS") spectrum cap.

Respectfully submitted by:

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Dated: January 20, 1995

I. THE RECORD SUPPORTS MINOR MODIFICATIONS TO THE TREATMENT OF 900 MHz SMR SYSTEMS

In general, Motorola supports the framework adopted for regulating 900 MHz specialized mobile radio ("SMR") systems under the *Third Report and Order*, as modified by the *Order on Reconsideration*.[1] In particular, Motorola supports the Commission's decision to grant primary status to many secondary facilities at 900 MHz and to continue allowing licensees to deploy new facilities on a secondary basis. However, like the American Mobile Telecommunications Association ("AMTA"), the Personal Communications Industry Association ("PCIA"), Geotek Communications, Inc. ("Geotek") and others, Motorola supports modifying the cut-off for qualifying for primary status from the date of licensing to the date of application.[2] Granting primary status to all 900 MHz secondary facilities applied for prior to August 10, 1994, is fundamentally more equitable since it eliminates the effects of application processing delays that are beyond the control of the licensee. In addition, creating a cut-off based upon the application filing date, rather than application grant date, is more consistent with the Commission's treatment of similar situations in other contexts, such as the 800 MHz SMR service.[3] The Commission should therefore grant primary status to

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[1] Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 89-553, FCC 94-212 (Sept. 23, 1994) ["*Third Report and Order*"]; FCC 94-331 (Dec. 22, 1994) ["*Order on Reconsideration*"].

[2] American Mobile Telecommunications Ass'n Petition at 6 ["AMTA Petition"]; Geotek Communications, Inc. Petition at 3 ["Geotek Petition"]; Personal Communications Industry Association Petition at 13 ["PCIA Petition"]; RAM Mobile Data USA Limited Partnership Petition at 6-7 ["RAM Petition"].

[3] *See* Amendment of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, FCC 94-271, PR Docket 93-144 (Nov. 4, 1994).

all facilities that were applied for prior to August 10, 1994, regardless of when the facility was licensed.

Motorola also concurs with AMTA and PCIA that the FCC should eliminate the five-year loading rule for existing 900 MHz SMRs.[4] As PCIA observes, the rule will "place[] [900 MHz SMR] licensees on an uneven playing field versus other CMRS licensees."[5] Indeed, the Commission itself has observed that "continuing to impose mobile loading requirements on some CMRS providers but not others contravenes the Congressional goal of regulatory symmetry and could unfairly impair the ability of certain licensees to compete."[6] Given the strong competitive basis for eliminating the rule, retaining the requirement for existing 900 MHz SMRs solely because the service is not yet mature is contrary to the public interest, especially in light of the fact that existing carriers have not been able to realize the full potential of the service due to regulatory delays in licensing areas outside of the largest designated filing areas. Current providers operating in the 900 MHz band have invested significant resources in developing a much needed service and should not be rewarded by being placed at a competitive disadvantage vis-a-vis their CMRS competitors.

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[4] AMTA Petition at 10-14; PCIA Petition at 6-7. *See also* RAM Petition at 9-10.

[5] *Id.* at 6; *see* AMTA Petition at 13-14; RAM Petition at 10.

[6] *Third Report and Order*, ¶190.

II. THE COMMISSION SHOULD NOT CLASSIFY APPLICATIONS THAT DO NOT CHANGE THE 22 dBu CONTOUR OF A SYSTEM AS NEW APPLICATIONS

Under the rules adopted in the *Third Report and Order*, any application proposing to locate a facility more than two kilometers from its original coordinates would be considered a new application and therefore would be subject to the filing of mutually exclusive applications and competitive bidding procedures. As AMTA has noted, this rule departs significantly from the Commission's original proposal, where it stated that it would use competitive bidding "only in exceptional cases where a major modification would fundamentally alter the nature of scope of the licensee's system."[7] As discussed below, Motorola supports AMTA's request that the Commission alter its rules upon reconsideration to classify applications that do not alter the 22 dBu contour of an existing system as modification, rather than new, applications.

By classifying a large number of minor system alterations as "new" applications, the Commission is contravening Congress's clear intent to impose limits on the use of competitive bidding and compounding their own administrative burden. While Motorola understands that the Commission is attempting to avoid the delays inherent in comparative procedures, which are mandated if a group of mutually exclusive applications includes a "modification" application, a less expansive definition of a "new" application will serve the same purpose. If, as AMTA has argued, the Commission classifies as a "modification" any application that does not expand a carrier's already authorized 22 dBu contours, the

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[7] Notice at ¶132.

Commission may, in fact, further limit the number of comparative hearings required since no such applications could be "overfiled" by any other parties. Such a definition would, at once, serve both the Commission's goal in expediency, by limiting comparative hearings, and carriers' need for flexibility and expeditious processing of applications. Under the circumstances, Motorola urges the Commission to modify its definition of a new application upon reconsideration.

III. THE COMMISSION SHOULD CLARIFY THE EFFECTIVE DATES OF THE NEW PART 90 RULES

Motorola supports the requests of AMTA and PCIA that the Commission clarify the effective dates of the individual Part 90 rules.[8] As PCIA noted, "system licenses issued prior to August 9, 1993, have been given 'grandfathered' status, and therefore certain rules do not apply until such licenses are regulated as CMRS."[9] AMTA states that, "[n]either the text of the [Third Report and Order] nor the revised rules contained in Appendix B thereto are clear as to which of the revised rules will apply to grandfathered Part 90 licensees, other than persons holding paging-only licenses."[10] It thus is not immediately evident which regulations are "grandfathered" and which regulations will be effective immediately. In order to assure that licensees will be able to fully understand their obligations as licensees, the Commission should specifically enumerate the effective date of the new regulations in Part 90.

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[8] AMTA Petition at 25-26; PCIA Petition at 15-16.

[9] *Id.* at 15.

[10] AMTA Petition at 26.

IV. THE COMMISSION SHOULD DISREGARD PRIVATE OBJECTIONS ON PENDING TRANSACTIONS

In their petitions for reconsideration, SMR Won and E.F. Johnson Company inappropriately request the FCC to entertain their objections to a transaction involving Motorola, Nextel, OneComm, and Dial Page.[11] By ignoring the Department of Justice ("DoJ") consent decree that resolves any competitive issues raised by the transfers, these petitioners attempt to coerce the FCC into reexamining transactional issues under the guise of analyzing the competitive state of the SMR industry in a rulemaking. These requests, however, bear no relationship to the issues raised in the *Third Report and Order* and should be dismissed as procedurally deficient. The District Court, rather than the FCC, is the proper forum for petitioners to air their grievances regarding decisions of the Department of Justice.

V. THE FCC'S DECISION TO CAP ATTRIBUTION OF SMR SPECTRUM AT 10 MHz WAS ENTIRELY PROPER

SMR Won also requests the Commission to reconsider its decision to attribute no more than 10 MHz of SMR spectrum when assessing compliance with the 45 MHz CMRS spectrum cap.[12] Upon close inspection, however, it is apparent that SMR Won is not concerned with the overall effect of aggregating large amounts of CMRS spectrum, but rather is more concerned with "permit[ting] a licensee to hold 15 MHz or more of SMR

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[11] E.F. Johnson Company Petition at 5-6; SMR Won Petition at 14-15.

[12] SMR Won Petition at 17.

spectrum in an MTA-sized market, thereby freezing the ability of local or regional incumbent licensees to expand."[13] Thus, SMR Won appears to be seeking a cap on the amount of SMR spectrum that can be acquired by a licensee. Such a spectrum cap, however, was never at issue in this proceeding and is totally inappropriate to raise at this time.

Furthermore, the 10 MHz limit on the attribution of SMR spectrum is fully justified and appropriate given the disparities in the manner that CMRS spectrum is licensed and used. As the Commission has noted, SMR spectrum "is encumbered in comparison with cellular," since "SMR channels are assigned on a station-by-station basis," SMR licensees have a "limited . . . ability to reconfigure" due to the "existence of neighboring co-channel users," and, most importantly, "SMR spectrum is not available as a contiguous block."[14] Thus, the Commission properly concluded that 10 MHz is an appropriate limit on the attribution of SMR spectrum since that amount is "the largest possible block of *contiguous* SMR spectrum."[15] SMR Won has advanced no policy reasons for revisiting this conclusion, which appropriately balances the different nature of the various commercial mobile radio services.

VI. CONCLUSION

For the foregoing reasons, Motorola respectfully requests the Commission to modify the rules adopted in the *Third Report and Order* to: (1) grant primary status to all 900 MHz

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[13] *Id.*

[14] *Third Report and Order*, ¶275.

[15] *Id.*

SMR stations applied for prior to August 10, 1994; (2) eliminate the loading requirements on existing 900 MHz SMRs; (3) clarify the effective dates of the various Part 90 rule changes for grandfathered licensees; and (4) alter the definition of "new" applications in the SMR service to exclude any applications that propose changes that do not expand a licensee's already authorized 22 dBu service contour. Furthermore, Motorola urges the Commission to reject both SMR Won's procedurally illegitimate attempt to reopen competitive issues regarding a specific transaction in a broad rulemaking proceeding and its attempt to create an unjustified SMR spectrum cap. Resolution of these issues in this manner will maximize competition in the CMRS, improve flexibility for licensees, and remain consistent with the Commission's overall goals in the *Third Report and Order*.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 1995, I caused copies of the foregoing "Comments" to be mailed via first-class postage prepaid mail to the following:

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